(FOR USE IN CIVIL CASES WITH MAG JUDGE AS PRESIDER)

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Plaintiff(s)

vs.

Defendant(s)

Case No. _____

CONSENT TO EXERCISE OF JURISDICTION BY UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of Title 28, U.S.C. Sec. 636(c)(1), the undersigned (party)(counsel of record for _____) in the above-captioned civil matter hereby voluntarily consents to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial and entry of a final judgment, with direct review by the Ninth Circuit Court of Appeals if an appeal is filed.

Date: _____ _____
Signature

_____
Print Name

DISTRICT JUDGE OPTION

Pursuant to Title 28, U.S.C. Sec. 636(c)(2) the undersigned (party)(counsel of record for _____ _____) in the above captioned civil matter acknowledges the availability of a United States Magistrate Judge but elects to have this case randomly assigned to a United States District Judge.

Date: _____ _____
Signature

_____
Print Name

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Consent was served (by mail) (by hand delivery) on all parties of record in this case, this _____ day of _____, 20____.

_____
Signature

DO NOT ELECTRONICALLY FILE. RETURN THIS FORM TO THE CLERK'S OFFICE NO LATER THAN TWENTY DAYS FROM YOUR APPEARANCE IN THIS CASE.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

CONSENT TO EXERCISE OF JURISDICTION BY UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS TO ALL PARTIES

Pursuant to Local Rule 3.8(a), all civil cases will be randomly assigned to a U.S. District Court Judge or to a U.S. Magistrate Judge.

When a case is filed and assigned to a U.S. Magistrate Judge, consent forms, for all parties, are stamped with a case number and given to the individual who is filing the case. On these forms, consent may be give to the jurisdiction of the magistrate judge by signing the consent section of the form. If all parties consent, the case will remain with the magistrate judge, pursuant to 28:636(c)(1). These cases are assigned to a magistrate judge for all purposes, including trial and final entry of judgment. Any appeal from a judgment entered by the Magistrate Judge may be taken directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of a district court.

Magistrate Judges do not conduct trials in felony criminal cases. Because of this, criminal cases will not interfere with scheduling and trials before a Magistrate Judge. It is likely that a consent to a Magistrate Judge assignment will mean that this civil case will be resolved sooner and less expensively. However, consent is voluntary, and no adverse consequences of any kind will be felt by any party or attorney who objects to assignment of a case to the Magistrate Judge.

The party filing the case or removal is responsible for serving all parties with the consent forms.

If any party chooses the district judge option, the case will be randomly reassigned to a U.S. District Court Judge. To elect to have the case heard before a U.S. District Court Judge, the District Judge Option section of the form must be completed.

.

Each party <u>must</u> file the completed consent form and certificate of service with the court no later than 20 days after entry of appearance. This document should be filed in paper form only and must serve a copy by mail or hand delivery upon all parties of record in the case.

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of ARIZONA

VICKI WEEKS,

V.

MERCK & COMPANY, INC.

SUMMONS IN A CIVIL CASE

CASE

TO: (Name and address of Defendant)

Merck & Company, Inc.
One Merck Drive
P.O. Box 100
Whitehouse Station, NJ

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Mark P. Robinson, Jr.
One Merck Drive
P.O. Box 100
Whitehouse Station, NJ

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

(By) DEPUTY CLERK

UNITED STATES DISTRICT COURT
2:36 pm, Apr 02, 2008
s/Richard H. Weare,Clerk
DISTRICT OF ARIZONA

DATE

(FOR USE IN CIVIL CASES WITH MAG JUDGE AS PRESIDER)

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Plaintiff(s)

vs.

Defendant(s)

Case No. _____

CONSENT TO EXERCISE OF JURISDICTION BY UNITED STATES MAGISTRATE JUDGE

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Date: _____ _____
Signature

_____
Print Name

DISTRICT JUDGE OPTION

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Date: _____ _____
Signature

_____
Print Name

CERTIFICATE OF SERVICE

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Signature

DO NOT ELECTRONICALLY FILE. RETURN THIS FORM TO THE CLERK'S OFFICE NO LATER THAN TWENTY DAYS FROM YOUR APPEARANCE IN THIS CASE.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

CONSENT TO EXERCISE OF JURISDICTION BY UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS TO ALL PARTIES

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The party filing the case or removal is responsible for serving all parties with the consent forms.

If any party chooses the district judge option, the case will be randomly reassigned to a U.S. District Court Judge. To elect to have the case heard before a U.S. District Court Judge, the District Judge Option section of the form must be completed.

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Each party <u>must</u> file the completed consent form and certificate of service with the court no later than 20 days after entry of appearance. This document should be filed in paper form only and must serve a copy by mail or hand delivery upon all parties of record in the case.

Ellen R. Serbin, AZ SBN 011706
PERONA, LANGER, BECK,
LALLANDE & SERBIN
300 East San Antonio
Long Beach, CA 90807-0948
562-426-6155; Fax 562-988-9365

Mark P. Robinson, Jr., SBN 054426
Cynthia L. Garber, SBN 208922
ROBINSON, CALCAGNIE & ROBINSON
620 Newport Center Drive, 7th Floor
Newport Beach, CA 92660
949-720-1288; Fax 949-720-1292

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

VICKI WEEKS,

Plaintiff,

vs.

MERCK & COMPANY, INC.,

Defendant.

CASE NO. CV 08-00623-PHX-DKD

NOTICE OF TRANSMITTAL OF NOTICE OF TAG-ALONG ACTION

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, AND ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that on April 9, 2008, a Notice of Tag-Along Action in the above-entitled matter was transmitted to the United States District Court Southern District of New York, MDL No. 1789, *In Re: Fosamax Products Liability Litigation*. A copy of said Notice is attached as Exhibit "A".

Dated: April __, 2008

By: _____

Ellen R. Serbin, AZ SBN 011706
PERONA, LANGER, BECK, LALLANDE & SERBIN

Attorneys for Plaintiff

BEFORE THE JUDICIAL PANEL

ON MULTIDISTRICT LITIGATION

IN RE:	)	MDL DOCKET NO. 1789 (JFK)
	)	
FOSAMAX PRODUCTS LIABILITY LITIGATION	)	
	)	
	)	

NOTICE OF TAG-ALONG ACTION BY PLAINTIFF, VICKI WEEKS

In accordance with Rule 7.2(I) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiff, Vicki Weeks (hereinafter "Plaintiff"), hereby gives notice to the Clerk of the Panel and all parties in the above-captioned litigation of a new "tag-along action," as defined by Rule 1.1.

As set forth in the attached Summons and Complaint, a new action, *Vicki Weeks v. Merck & Co.,* was recently filed by Plaintiff's counsel in the Central District of California on April 1, 2008, Case No. CV-08-00623-PHX-DKD (see Exhibit "A"). The Plaintiff's civil action involves common questions of law and fact with the above-captioned action currently under consideration by the Panel. Accordingly, Plaintiff respectfully requests that the Panel treat the Plaintiff's recently filed action as a "tag-along action."

Dated: April 10, 2008 ROBINSON, CALCAGNIE & ROBINSON

By: _____

Mark P. Robinson, Jr.
Cynthia L. Garber
T: 949-720-1288
F: 949-720-1292

Attorneys for Plaintiff
Vicki Weeks

BEFORE THE JUDICIAL PANEL

ON MULTIDISTRICT LITIGATION

IN RE:	)	MDL DOCKET NO. 1789 (JFK)
	)	
FOSAMAX PRODUCTS LIABILITY LITIGATION	)	
	)	
	)	

CERTIFICATE OF SERVICE

I do certify that I have served a copy of Notice of Tag-Along Action by Plaintiff, Vicki Weeks, upon the following counsel of record, by placing a copy of same in the United States Mail, properly addressed and postage prepaid, via first class mail, on this 10th day of April, 2008.

Christopher A. Seeger
Seeger Weiss LLP
One William Street
New York, NY 10004
(212) 584-0700

Plaintiffs' Liaison Counsel

Alyson B. Jones
Butler Snow, O'Mara,
Stevens & Cannada
POB 22567
Jackson, MS 39225-2567
601-948-5711

Attorneys for Defendant,
Merck & Co.

ROBINSON, CALCAGNIE & ROBINSON

By: _____

Mark P. Robinson, Jr.
Cynthia L. Garber
Tel: 949-720-1288
Fax: 949-720-1292

Attorneys for Plaintiff
Vicki Weeks

EXHIBIT “A”

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of ARIZONA

VICKI WEEKS,

V.

MERCK & COMPANY, INC.

SUMMONS IN A CIVIL CASE

CASE

TO: (Name and address of Defendant)

Merck & Company, Inc.
One Merck Drive
P.O. Box 100
Whitehouse Station, NJ

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Mark P. Robinson, Jr.
One Merck Drive
P.O. Box 100
Whitehouse Station, NJ

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

Ellen R. Serbin, AZ SBN 011706
PERONA, LANGER, BECK,
LALLANDE & SERBIN
300 East San Antonio
Long Beach, CA 90807-0948
562-426-6155; Fax 562-988-9365

Mark P. Robinson, Jr., SBN 054426
Cynthia L. Garber, SBN 208922
ROBINSON, CALCAGNIE & ROBINSON
620 Newport Center Drive, 7th Floor
Newport Beach, CA 92660
949-720-1288; Fax 949-720-1292

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

VICKI WEEKS,

Plaintiff,

vs.

MERCK & COMPANY, INC.,

Defendant.

CASE NO. _____

COMPLAINT

1. Strict Liability – Failure to Warn
2. Strict Products Liability -- Defective Design
3. Negligence
4. Breach of Implied Warranty
5. Breach of Express Warranty
6. Deceit by Concealment
7. Negligent Misrepresentation

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff, VICKI WEEKS, alleges as follows:

INTRODUCTION

This case involves the prescription drug FOSAMAX® (alendronate sodium), (hereinafter "FOSAMAX® "), which was manufactured, sold, distributed, and promoted by defendant for the treatment of osteoporosis. Defendants misrepresented that FOSAMAX®, was a safe and effective treatment for such disorders, when in fact the drug caused serious injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration.

JURISDICTION AND VENUE

1. The jurisdiction of this Court over the subject matter of this action is predicated on 28 U.S.C. Section 1332. Plaintiff is a citizen of the State of California, County of Los Angeles, and Defendants are corporations, whose States of incorporation and principal places of business are as set forth in paragraph 13 below. Plaintiff is a citizen of a State different from the State where Defendants are incorporated and have their principal places of business. The amount in controversy exceeds $75,000.00, exclusive of interest and costs, and the parties are citizens of different states. Venue in this Court is proper pursuant to 28 U.S.C. §1391(c) in that substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District, and Defendants have sufficient contacts within the District to subject them to personal jurisdiction in this District.

GENERAL ALLEGATIONS

2. This action is an action for damages brought on behalf of the Plaintiff who was prescribed and supplied with, received, and who ingested and consumed the prescription drug FOSAMAX®, as tested, studied, researched, evaluated, endorsed, designed, formulated, compounded, manufactured, produced, processed,

assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised for sale, prescribed, sold or otherwise placed in the stream of interstate commerce by Defendants. This action seeks, among other relief, general and special damages and equitable relief in order to enable the Plaintiff to treat and monitor the dangerous, severe and life-threatening side effects caused by FOSAMAX®.

3. The injuries and damages of Plaintiff were caused by the wrongful acts, omissions, and fraudulent misrepresentations of Defendants.

4. At all times herein mentioned, each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator and joint venturer of each of the remaining Defendants herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and joint venture and rendered substantial assistance and encouragement to the other Defendants, knowing that their conduct constituted a breach of duty owed to Plaintiff.

5. There exists, and at all times herein mentioned there existed, a unity of interest in ownership between certain Defendants and other certain Defendants such that any individuality and separateness between the certain Defendants has ceased and these Defendants are the alter-ego of the other certain Defendants and exerted control over those Defendants. Adherence to the fiction of the separate existence of these certain Defendants as an entity distinct from other certain Defendants will permit an abuse of the corporate privilege and would sanction fraud and would promote injustice.

6. The damages of Plaintiff were caused by the wrongful acts, omissions, and fraudulent misrepresentations of Defendants.

7. At all times herein mentioned, the Defendants, and each of them were engaged in the business of, or were successors in interest to, entities engaged in the business of research, licensing, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing,

marketing, labeling, promoting, packaging and/or advertising for sale or selling the prescription drug known as FOSAMAX®, for the use and ingestion by Plaintiff.

8. At all times herein mentioned, the Defendants, and each of them, were corporations authorized to do business in the state of residence of Plaintiff.

9. At all times herein mentioned, the officers and directors of the Defendants named herein participated in, authorized and directed the production and promotion of the aforementioned product when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of said product and thereby actively participated in the tortious conduct which resulted in the injuries of Plaintiff herein.

10. Plaintiff files this lawsuit within the applicable limitations period of first suspecting that said drugs were the cause of any appreciable harm sustained by Plaintiff. Plaintiff could not, by the exercise of reasonable diligence, have discovered the wrongful cause of the Plaintiff's injuries at an earlier time because the injuries were caused without perceptible trauma or harm, and when the Plaintiff's injuries were discovered their cause was unknown to Plaintiff. Plaintiff did not suspect, nor did Plaintiff have reason to suspect, that Plaintiff had been injured, the cause of the injuries, or the tortious nature of the conduct causing the injuries, until less than the applicable limitations period prior to the filing of this action. Additionally, Plaintiff was prevented from discovering this information sooner because Defendants herein misrepresented and continue to misrepresent to the public and to the medical profession that the drugs are safe and free from serious side effects, and Defendants have fraudulently concealed facts and information that could have led Plaintiff to discover a potential cause of action.

PARTIES

The Plaintiff

11. Plaintiff, VICKI WEEKS, was prescribed and supplied with, received, took, ingested, and consumed the prescription drug FOSAMAX®, and was injured

as a result. Plaintiff resides in the State of Arizona, County of Pinal, and is a citizen of the State of Arizona.

The Defendants

12. Defendant, Merck & Company Inc., tested, studied, researched, evaluated, endorsed, designed, formulated, compounded, manufactured, produced, processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised for sale, prescribed, sold and distributed, or otherwise placed in the stream of interstate commerce, FOSAMAX®, which was ingested by the Plaintiff. Defendant, Merck & Company Inc. was and is an American pharmaceutical company, incorporated under the laws of the State of New Jersey, whose principal place of business is: One Merck Drive, P.O. Box 100, Whitehouse Station, New Jersey. On information and belief, said entity does business in California and at all times relevant herein, it developed, manufactured, marketed, distributed, and sold FOSOMAX® in interstate commerce and in the state of residence of Plaintiff. At all times herein mentioned, the officers and directors of the Defendants named herein participated in, authorized and directed the production and promotion of the aforementioned product when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of said product and thereby actively participated in the tortious conduct which resulted in the injuries and damages suffered by Plaintiff herein.

13. This Complaint seeks redress for damages sustained by the above-named Plaintiff's individual use of FOSAMAX®, manufactured and sold by Merck, the Defendants herein.

OVERVIEW

14. FOSAMAX® is a pharmaceutical osteoprotective drug, approved by the FDA for the treatment of osteoporosis. Defendants Merck did manufacture,

design, package, market and distribute this drug. Defendants Merck (hereinafter "Defendants") encouraged the use of this drug in improper customers, misrepresented the safety and effectiveness of this drug and concealed or understated its dangerous side effects.

15. The market for such osteoporosis drugs is huge. According to Merck it has experienced significant growth in the sales of FOSAMAX® $3.5 Billion in 2005.

16. In June 1995 Merck submitted an application for FOSAMAX® which was approved by the FDA in September 1995 for use in the U.S. for the treatment of osteoporosis.

17. At all times relevant hereto, the Defendants actually knew of the defective nature of their product as herein set forth, yet continued to design, manufacture, market, distribute and sell their product so as to maximize sales and profits at the expense of the general public's health and safety in conscious disregard of the foreseeable harm caused by this product. Defendants' conduct exhibits such an entire want of care as to establish that their actions were a result of fraud, ill will, recklessness, gross negligence or willful and intentional disregard to Plaintiff's rights, and hence punitive damages are appropriate.

18. The damages sought herein are the direct and proximate result of Defendants' wrongful conduct in connection with designing, testing, inspecting, manufacturing, assembling, developing, labeling, sterilizing, licensing, marketing, advertising, promoting, selling, packaging, supplying and/or distributing the prescription drug FOSAMAX®.

19. At all times relevant hereto, Defendants were engaged in the business of designing, testing, inspecting, manufacturing, assembling, developing, labeling, sterilizing, licensing, marketing, advertising, promoting, selling, packaging, supplying and/or distributing the pharmaceutical drug FOSAMAX® throughout the United States.

20. Had Defendants properly disclosed the risks associated with using FOSAMAX®, Plaintiff would not have taken FOSAMAX®.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

21. FOSAMAX® (generically known as alendronate sodium) is an oral form among the class of drugs called nitrogenous bisphosphonates. This class of drugs, including Aredia has been available in the U.S. since the early 1990's.

22. The Food and Drug Administration approved FOSAMAX® on September 1995 for the treatment of management of prevention of osteoporosis in postmenopausal women, for increasing bone mass in men with osteoporosis, for men and women with low bone mass taking glucocorticoids and those with Paget's disease.

23. FOSAMAX® is believed to treat osteoporosis by inhibiting osteoclasis, thereby preventing bone turnover.

24. Although FOSAMAX was aggressively and widely marketed by Merck as a safe and effective treatment far more effective than traditional calcium supplements, when in fact FOSAMAX had a significantly higher risk of osteonecrosis, a condition extremely rare except in the presence of bisphosphonate treatment.

25. Defendants' strategy beginning in the 1995 has been to aggressively market and sell its products by falsely misleading potential users about the products and by failing to protect users from serious dangers that Defendants knew or should have known to result from use of these products.

26. The product warnings for FOSAMAX® in effect during the relevant time period were vague, incomplete or otherwise wholly inadequate, both substantively and graphically, to alert prescribing physicians as well as consumer patients of the actual risks associated with the drug.

///

27. Defendants widely and successfully marketed FOSAMAX® in the United States, by undertaking an advertising campaign extolling the virtues of FOSAMAX® in order to induce widespread use of the products. The marketing campaign consisted of advertisements, promotional literature to be placed in the offices of doctors and other health care providers, and other promotional materials provided to potential FOSAMAX® users. The advertising program, as a whole, sought to create the image, impression and belief by consumers and physicians that the use of FOSAMAX® was safe for human use, had fewer side effects and adverse reactions than other nitrogenous bisphosphonates and would not interfere with daily life, even though Defendants knew these to be false, and even though the Defendants had no reasonable grounds to believe them to be true.

28. Defendants purposefully downplayed and understated the health hazards and risks associated with FOSAMAX®. Defendants, through sales representatives, promotional literature, audio conferences, professional meetings, and press releases deceived potential users of FOSAMAX® by overstating the benefits of FOSAMAX® and minimizing the known related risks associated with the drug. While withholding safety information from the FDA, the prescribing physicians and that public

29. If the Plaintiff had known the risks and dangers associated with FOSAMAX®, said Plaintiff would not have taken FOSAMAX ® and consequentially would not have been subject to its serious side effects.

FIRST CAUSE OF ACTION

STRICT LIABILITY – FAILURE TO WARN

30. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

31. Defendants, directly or indirectly, negligently and/or defectively designed, tested, inspected, manufactured, assembled, developed, labeled sterilized,

licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed the drug FOSAMAX®.

32. At all times material hereto, Defendants had a duty to users and/or consumers of FOSAMAX®, including Plaintiff, to exercise reasonable care in the design, testing, inspection, manufacture, assembly, development, labeling, sterilization, licensing, marketing, advertising, promotion, sale, packaging, supply and/or distribution of FOSAMAX®.

33. Defendants breached that duty and were negligent in the design, testing, inspection, manufacture, assembly, development, labeling, sterilization, licensing, marketing, advertising, promotion, sales, packaging, supply and/or distribution of FOSAMAX® in that: FOSAMAX® was defective when put on the market by Defendants; that with such defect, FOSAMAX® was reasonably certain to be dangerous when put to normal use; and that Defendants failed to use reasonable care in designing or making FOSAMAX® or in inspecting it for defects. Specifically, Defendants breached their duty by, among other things:

a. Failing to include adequate warnings that would alert the medical, pharmaceutical and/or scientific communities, and users and/or consumers of the drug, including Plaintiff, to the potential risks and serious side effects of the drug;
b. Failing to adequately and properly test and inspect the drug before placing the drug on the market;
c. Failing to conduct sufficient testing and inspection of the drug which, if properly performed, would have shown that the drug had serious side effects, including, but not limited to, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration;
d. Failing to adequately warn the medical, pharmaceutical and/or scientific communities, and users and/or consumers of the drug,

including Plaintiff, of the potential risks and other serious side effects associated with the drug, including, among other things, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration;

e. Failing to provide adequate post-marketing warnings or instructions after Defendants knew or should have known of the significant risks associated with the use of the drug;

f. Failing to recall and/or remove the drug from the stream of commerce despite the fact that Defendants knew or should have known of the defective and unreasonably dangerous nature of the drug, including the significant health risks associated with the use of the drug.

g. Encouraging misuse and overuse while failing to disclose the side effects of the drug to the medical, pharmaceutical and/or scientific communities and users and/or consumers, including Plaintiff, in order to make a profit from sales.

34. Defendants knew or should have known that FOSAMAX® caused unreasonably dangerous risks and serious side effects of which users and/or consumers of the drug, including Plaintiff, were not aware. Defendants nevertheless advertised, promoted, marketed, sold, distributed and/or supplied FOSAMAX® knowing that there were safer methods for treatment of osteoporosis.

35. As a direct, legal, proximate and producing result of the negligence of Defendants, Plaintiff sustained injuries including, among other things, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration. In most of these cases, these injuries caused and continue to cause extensive pain and suffering and severe emotional distress and substantially reduced Plaintiff's ability to enjoy life. In addition, Defendants' negligence caused Plaintiff to expend substantial sums of money for medical, hospital, and related care.

36. As a direct, legal, proximate and producing result of the negligence of Defendants, Plaintiff was injured in health, strength and activity and suffered physical injuries as well as mental anguish. All of these said injuries caused Plaintiff intense anxiety, distress, fear, pain, suffering and distress secondary to physical injury and damages.

37. As a direct, legal proximate and producing result of the negligence of Defendants, Plaintiff required reasonable and necessary health care treatment and services and had incurred expenses therefore. Defendants' negligence was a contributing cause of Plaintiff's injuries and Plaintiff's economic and non-economic loss.

38. By reason of the foregoing, Plaintiff was damaged by the negligence and wanton and willful recklessness of the Defendants. The amount sought herein exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter.

SECOND CAUSE OF ACTION

STRICT PRODUCTS LIABILITY

DEFECTIVE DESIGN

39. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

40. At all times material hereto, Defendants have engaged in the business of designing, testing, inspecting, manufacturing, assembling, developing, labeling, sterilizing, licensing, marketing, advertising, promoting, selling, packaging, supplying and/or distributing the drug FOSAMAX® , which is defective and unreasonably dangerous to users and/or consumers of the drug, including Plaintiff.

41. At all times material hereto, FOSAMAX® was designed, tested, inspected, manufactured, assembled, developed, labeled, sterilized, licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed by

Defendants in a defective and unreasonably dangerous condition in ways which include, but are not limited to one or more of the following:

a. When placed in the stream of commerce, the drug contained unreasonably dangerous design defects and was not reasonably safe and fit for its intended or reasonably foreseeable purpose or as intended to be used, thereby subjecting users and/or consumers of the drug, including Plaintiff, to risks which exceeded the benefits of the drug;

b. The drug was insufficiently tested;

c. The drug caused harmful side effects that outweighed any potential utility;

d. The drug was not accompanied by adequate labeling or instructions for use to fully apprise the medical, pharmaceutical and/or scientific communities, and users and/or consumers of the drug, including Plaintiff, of the potential risks and serious side effects associated with its use;

e. In light of the potential and actual risk of harm associated with the drug's use, a reasonable person who had actual knowledge of this potential and actual risk of harm would have concluded that FOSAMAX® should not have been marketed in that condition.

42. At all times the drug FOSAMAX® was designed, tested, inspected, manufactured, assembled, developed, labeled, sterilized, licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed, it was expected to reach, and did reach, users and/or consumers of the drug across the United States, including Plaintiff, without substantial change in the defective and unreasonably dangerous condition in which it was sold.

43. At all times, Plaintiff used FOSAMAX® for its intended or reasonably foreseeable purpose.

44. As a direct, legal, proximate and producing result of the defective and unreasonably dangerous condition of FOSAMAX®, Plaintiff sustained substantial injuries, including in some cases among other things, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration. The defective and unreasonably dangerous condition of FOSAMAX® has caused Plaintiff to expend substantial sums of money for medical, hospital, and related care.

THIRD CAUSE OF ACTION
NEGLIGENCE

45. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

46. Defendants had a duty to properly manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, label, package, distribute, prepare for use, sell, prescribe and adequately warn of the risks and dangers of FOSAMAX®.

47. Defendants negligently and carelessly manufactured, designed, formulated, distributed, compounded, produced, processed, assembled, inspected, distributed, marketed, labeled, packaged, prepared for use and sold the aforementioned products and failed to adequately test and warn of the risks and dangers of the aforementioned products.

48. Despite the fact that Defendants knew or should have known that FOSAMAX® caused unreasonable, dangerous side effects, Defendants continued to market FOSAMAX® to consumers, including Plaintiff, when there were safer, alternative methods of treating.

49. Defendants knew or should have known that consumers such as Plaintiff would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care as described above. Defendants' negligence was a proximate cause of

the Plaintiff's injuries, and the damages, harm and economic loss that Plaintiff suffered, and will continue to suffer, as described and prayed for herein.

FOURTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY

50. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

51. Prior to the time that the aforementioned products were used by the Plaintiff, Defendants impliedly warranted to the Plaintiff and Plaintiff's agents and physicians that said products were of merchantable quality and safe and fit for the use for which they were intended.

52. Plaintiff was unskilled in the research, design and manufacture of the aforementioned products and reasonably relied entirely on the skill, judgment and implied warranty of the Plaintiff in using the aforementioned products.

53. The aforementioned product was neither safe for its intended use nor of merchantable quality, as warranted by Defendants, in that FOSAMAX® had dangerous propensities when put to its intended use and would cause severe injuries to the user.

54. As a result of the aforementioned breach of implied warranties by Defendants, the Plaintiff was injured and suffered the harm and damages as alleged herein.

FIFTH CAUSE OF ACTION
FOR BREACH OF EXPRESS WARRANTY

55. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

56. At all times herein mentioned, Defendants expressly represented and warranted to Plaintiff and Plaintiff's agents and physicians, by and through

statements made by Defendants or its authorized agents or sales representatives, orally and in publications, package inserts and other written materials intended for physicians, medical patients and the general public, that the aforementioned product was safe, effective, fit and proper for their intended use. In reliance upon said warranties, Plaintiff purchased said product.

57. In utilizing the aforementioned products, Plaintiff relied on the skill, judgment, representations and foregoing express warranties of the Defendants. Said warranties and representations were false in that the aforementioned products were not safe and were unfit for the uses for which they were intended.

58. As a result of the foregoing breach of express warranties by the Defendants, Plaintiff was injured and sustained the harm and damages as herein alleged.

SIXTH CAUSE OF ACTION
DECEIT BY CONCEALMENT

59. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

60. Defendants, from the time that FOSAMAX® was first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, willfully deceived Plaintiff and by concealing from Plaintiff and Plaintiff's physicians and the general public, the true facts concerning said pharmaceutical products, which the Defendants had a duty to disclose.

61. Defendant Merck has not warned, and continues not to warn, physicians and consumers' physicians and consumers in the United States.

62. Defendant Merck conducted a sales and marketing campaign to promote the sale of the aforementioned drug products and willfully deceive Plaintiff and Plaintiff's physicians and the general public as to the health risks and consequences of the use of FOSAMAX® Defendants were aware of the foregoing,

and that FOSAMAX® was not safe, fit and effective for human consumption, the use of FOSAMAX® is hazardous to health, and FOSAMAX® has a serious propensity to cause serious injuries to users, including but not limited to the injuries suffered by Plaintiff and the harm and damages sustained by Plaintiff as delineated herein.

63. Defendants intentionally concealed and suppressed the true facts concerning FOSAMAX® with the intent to defraud Plaintiff, in that the Defendants knew that the Plaintiff's physicians would not prescribe FOSAMAX®, and the Plaintiff would not have used FOSAMAX®, if Plaintiff were aware of the true facts concerning the dangers of FOSAMAX®.

64. As a result of the foregoing fraudulent and deceitful conduct by the Defendants, Plaintiff was injured and suffered harm and damages as alleged herein.

SEVENTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

65. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

66. Defendants, from the time that FOSAMAX® was first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, made false misrepresentations, as previously set forth herein, to Plaintiff, Plaintiff's physicians, and the general public, including but not limited to the misrepresentation that FOSAMAX® was safe, fit and effective for human consumption. Defendants conducted a sales and marketing campaign to promote the sale of FOSAMAX® and willfully deceived Plaintiff, Plaintiff's physicians and the general public as to the health risks and consequences of the use of the aforementioned products.

67. The Defendants made the foregoing representation without any reasonable ground for believing them to be true. These representations were made

directly by Defendants, by sales representatives and other authorized agents of said Defendants, and in publications and other written materials directed to physicians, medical patients and the public, with the intention of inducing reliance, and the prescription, purchase and use of the subject products.

68. The foregoing representations by the Defendants were in fact false, in that FOSAMAX® was not safe, fit and effective for human consumption, the use of FOSAMAX® is hazardous to health, and FOSAMAX® has a serious propensity to cause serious injuries to users, including but not limited to the injuries suffered by Plaintiff as delineated herein.

69. The foregoing representations by Defendants were made with the intention of inducing reliance and the prescription, purchase and use of FOSAMAX®.

70. In reliance on the misrepresentations by the Defendants, the Plaintiff was induced to purchase and use FOSAMAX®. If the Plaintiff had known of the true facts and the facts concealed by the Defendants, said Plaintiff would not have used FOSAMAX®. The reliance of Plaintiff upon Defendants' misrepresentations was justified because such misrepresentations were made and conducted by individuals and entities that were in a position to know the true facts.

71. As a result of the foregoing negligent misrepresentations by the Defendants, Plaintiff was injured and suffered harm and damages as alleged herein.

PUNITIVE DAMAGES ALLEGATIONS

(As to the First, Second, Third, Sixth, and Seventh Causes of Action, only)

72. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

73. The acts, conduct, and omissions of Defendants as alleged throughout this Complaint were willful and malicious and were done with a conscious disregard

for the rights of Plaintiff and other users of the Defendants' product and for the primary purpose of increasing Defendants' profits from the sale and distribution of FOSAMAX®. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish and make an example of Defendants.

74. Prior to the manufacturing, sale and distribution of said prescribed medication, Defendants knew that said medication was in a defective condition as previously described herein and knew that those who were prescribed the medication would experience and did experience severe physical, mental, and emotional injuries. Further, Defendants, through their officers, directors, managers, and agents, had knowledge that the medication presented a substantial and unreasonable risk of harm to the public, including Plaintiff and, as such, said consumers of said drugs were unreasonably subjected to risk of injury or death from the consumption of said product.

75. Despite such knowledge, Defendants, acting through their officers, directors and managing agents for the purpose of enhancing Defendants' profits, knowingly and deliberately failed to remedy the known defects in said medication and failed to warn the public, including Plaintiff, of the extreme risk of injury occasioned by said defects inherent in said medication. Said Defendants and their individual agents, officers, and directors intentionally proceeded with the manufacturing, sale, and distribution and marketing of said medication knowing persons would be exposed to serious danger in order to advance Defendants' own pecuniary interest and monetary profits.

76. Defendants' conduct was despicable, and so contemptible that it would be looked down upon and despised by ordinary decent people, and was carried on by Defendants with willful and conscious disregard for the safety of and the rights of Plaintiff, entitling Plaintiff to exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants, as follows, as appropriate to each cause of action alleged:

1. Past and future general damages in excess of seventy-five thousand dollars ($75,000.00), exclusive of interest and costs, the exact amount of which has yet to be ascertained, in an amount which will conform to proof at time of trial;

2. Past and future economic and special damages according to proof at the time of trial;

3. Past medical and burial expenses according to proof at the time of trial;

4. For punitive or exemplary damages according to proof on the First, Second, Third, Sixth, and Seventh causes of action;

5. Restitution, disgorgement of profits, and other equitable relief;

6. Injunctive relief;

7. Attorney's fees;

8. For costs of suit incurred herein;

9. For pre-judgment interest as provided by law;

10. For such other and further relief as the Court may deem just and proper.

Dated: April 1, 2008

Ellen R. Serbin, AZ SBN 011706
PERONA, LANGER, BECK,
LALLANDE & SERBIN
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by rule 38(a) of the *Federal Rules of Civil Procedure*.

Dated: April 1, 2008

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

VICKI WEEKS,

Plaintiff,

vs.

MERCK & COMPANY, INC.,

Defendant.

CASE NO. _____

COMPLAINT

1. Strict Liability – Failure to Warn
2. Strict Products Liability -- Defective Design
3. Negligence
4. Breach of Implied Warranty
5. Breach of Express Warranty
6. Deceit by Concealment
7. Negligent Misrepresentation

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff, VICKI WEEKS, alleges as follows:

INTRODUCTION

This case involves the prescription drug FOSAMAX® (alendronate sodium), (hereinafter "FOSAMAX® "), which was manufactured, sold, distributed, and promoted by defendant for the treatment of osteoporosis. Defendants misrepresented that FOSAMAX®, was a safe and effective treatment for such disorders, when in fact the drug caused serious injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration.

JURISDICTION AND VENUE

1. The jurisdiction of this Court over the subject matter of this action is predicated on 28 U.S.C. Section 1332. Plaintiff is a citizen of the State of California, County of Los Angeles, and Defendants are corporations, whose States of incorporation and principal places of business are as set forth in paragraph 13 below. Plaintiff is a citizen of a State different from the State where Defendants are incorporated and have their principal places of business. The amount in controversy exceeds $75,000.00, exclusive of interest and costs, and the parties are citizens of different states. Venue in this Court is proper pursuant to 28 U.S.C. §1391(c) in that substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District, and Defendants have sufficient contacts within the District to subject them to personal jurisdiction in this District.

GENERAL ALLEGATIONS

2. This action is an action for damages brought on behalf of the Plaintiff who was prescribed and supplied with, received, and who ingested and consumed the prescription drug FOSAMAX®, as tested, studied, researched, evaluated, endorsed, designed, formulated, compounded, manufactured, produced, processed,

assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised for sale, prescribed, sold or otherwise placed in the stream of interstate commerce by Defendants. This action seeks, among other relief, general and special damages and equitable relief in order to enable the Plaintiff to treat and monitor the dangerous, severe and life-threatening side effects caused by FOSAMAX®.

3. The injuries and damages of Plaintiff were caused by the wrongful acts, omissions, and fraudulent misrepresentations of Defendants.

4. At all times herein mentioned, each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator and joint venturer of each of the remaining Defendants herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and joint venture and rendered substantial assistance and encouragement to the other Defendants, knowing that their conduct constituted a breach of duty owed to Plaintiff.

5. There exists, and at all times herein mentioned there existed, a unity of interest in ownership between certain Defendants and other certain Defendants such that any individuality and separateness between the certain Defendants has ceased and these Defendants are the alter-ego of the other certain Defendants and exerted control over those Defendants. Adherence to the fiction of the separate existence of these certain Defendants as an entity distinct from other certain Defendants will permit an abuse of the corporate privilege and would sanction fraud and would promote injustice.

6. The damages of Plaintiff were caused by the wrongful acts, omissions, and fraudulent misrepresentations of Defendants.

7. At all times herein mentioned, the Defendants, and each of them were engaged in the business of, or were successors in interest to, entities engaged in the business of research, licensing, designing, formulating, compounding, testing, manufacturing, producing, processing, assembling, inspecting, distributing,

marketing, labeling, promoting, packaging and/or advertising for sale or selling the prescription drug known as FOSAMAX®, for the use and ingestion by Plaintiff.

8. At all times herein mentioned, the Defendants, and each of them, were corporations authorized to do business in the state of residence of Plaintiff.

9. At all times herein mentioned, the officers and directors of the Defendants named herein participated in, authorized and directed the production and promotion of the aforementioned product when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of said product and thereby actively participated in the tortious conduct which resulted in the injuries of Plaintiff herein.

10. Plaintiff files this lawsuit within the applicable limitations period of first suspecting that said drugs were the cause of any appreciable harm sustained by Plaintiff. Plaintiff could not, by the exercise of reasonable diligence, have discovered the wrongful cause of the Plaintiff's injuries at an earlier time because the injuries were caused without perceptible trauma or harm, and when the Plaintiff's injuries were discovered their cause was unknown to Plaintiff. Plaintiff did not suspect, nor did Plaintiff have reason to suspect, that Plaintiff had been injured, the cause of the injuries, or the tortious nature of the conduct causing the injuries, until less than the applicable limitations period prior to the filing of this action. Additionally, Plaintiff was prevented from discovering this information sooner because Defendants herein misrepresented and continue to misrepresent to the public and to the medical profession that the drugs are safe and free from serious side effects, and Defendants have fraudulently concealed facts and information that could have led Plaintiff to discover a potential cause of action.

PARTIES

The Plaintiff

11. Plaintiff, VICKI WEEKS, was prescribed and supplied with, received, took, ingested, and consumed the prescription drug FOSAMAX®, and was injured

as a result. Plaintiff resides in the State of Arizona, County of Pinal, and is a citizen of the State of Arizona.

The Defendants

12. Defendant, Merck & Company Inc., tested, studied, researched, evaluated, endorsed, designed, formulated, compounded, manufactured, produced, processed, assembled, inspected, distributed, marketed, labeled, promoted, packaged, advertised for sale, prescribed, sold and distributed, or otherwise placed in the stream of interstate commerce, FOSAMAX®, which was ingested by the Plaintiff. Defendant, Merck & Company Inc. was and is an American pharmaceutical company, incorporated under the laws of the State of New Jersey, whose principal place of business is: One Merck Drive, P.O. Box 100, Whitehouse Station, New Jersey. On information and belief, said entity does business in California and at all times relevant herein, it developed, manufactured, marketed, distributed, and sold FOSOMAX® in interstate commerce and in the state of residence of Plaintiff. At all times herein mentioned, the officers and directors of the Defendants named herein participated in, authorized and directed the production and promotion of the aforementioned product when they knew, or with the exercise of reasonable care should have known, of the hazards and dangerous propensities of said product and thereby actively participated in the tortious conduct which resulted in the injuries and damages suffered by Plaintiff herein.

13. This Complaint seeks redress for damages sustained by the above-named Plaintiff's individual use of FOSAMAX®, manufactured and sold by Merck, the Defendants herein.

OVERVIEW

14. FOSAMAX® is a pharmaceutical osteoprotective drug, approved by the FDA for the treatment of osteoporosis. Defendants Merck did manufacture,

design, package, market and distribute this drug. Defendants Merck (hereinafter "Defendants") encouraged the use of this drug in improper customers, misrepresented the safety and effectiveness of this drug and concealed or understated its dangerous side effects.

15. The market for such osteoporosis drugs is huge. According to Merck it has experienced significant growth in the sales of FOSAMAX® $3.5 Billion in 2005.

16. In June 1995 Merck submitted an application for FOSAMAX® which was approved by the FDA in September 1995 for use in the U.S. for the treatment of osteoporosis.

17. At all times relevant hereto, the Defendants actually knew of the defective nature of their product as herein set forth, yet continued to design, manufacture, market, distribute and sell their product so as to maximize sales and profits at the expense of the general public's health and safety in conscious disregard of the foreseeable harm caused by this product. Defendants' conduct exhibits such an entire want of care as to establish that their actions were a result of fraud, ill will, recklessness, gross negligence or willful and intentional disregard to Plaintiff's rights, and hence punitive damages are appropriate.

18. The damages sought herein are the direct and proximate result of Defendants' wrongful conduct in connection with designing, testing, inspecting, manufacturing, assembling, developing, labeling, sterilizing, licensing, marketing, advertising, promoting, selling, packaging, supplying and/or distributing the prescription drug FOSAMAX®.

19. At all times relevant hereto, Defendants were engaged in the business of designing, testing, inspecting, manufacturing, assembling, developing, labeling, sterilizing, licensing, marketing, advertising, promoting, selling, packaging, supplying and/or distributing the pharmaceutical drug FOSAMAX® throughout the United States.

20. Had Defendants properly disclosed the risks associated with using FOSAMAX®, Plaintiff would not have taken FOSAMAX®.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

21. FOSAMAX® (generically known as alendronate sodium) is an oral form among the class of drugs called nitrogenous bisphosphonates. This class of drugs, including Aredia has been available in the U.S. since the early 1990's.

22. The Food and Drug Administration approved FOSAMAX® on September 1995 for the treatment of management of prevention of osteoporosis in postmenopausal women, for increasing bone mass in men with osteoporosis, for men and women with low bone mass taking glucocorticoids and those with Paget's disease.

23. FOSAMAX® is believed to treat osteoporosis by inhibiting osteoclasis, thereby preventing bone turnover.

24. Although FOSAMAX was aggressively and widely marketed by Merck as a safe and effective treatment far more effective than traditional calcium supplements, when in fact FOSAMAX had a significantly higher risk of osteonecrosis, a condition extremely rare except in the presence of bisphosphonate treatment.

25. Defendants' strategy beginning in the 1995 has been to aggressively market and sell its products by falsely misleading potential users about the products and by failing to protect users from serious dangers that Defendants knew or should have known to result from use of these products.

26. The product warnings for FOSAMAX® in effect during the relevant time period were vague, incomplete or otherwise wholly inadequate, both substantively and graphically, to alert prescribing physicians as well as consumer patients of the actual risks associated with the drug.

/ / /

27. Defendants widely and successfully marketed FOSAMAX® in the United States, by undertaking an advertising campaign extolling the virtues of FOSAMAX® in order to induce widespread use of the products. The marketing campaign consisted of advertisements, promotional literature to be placed in the offices of doctors and other health care providers, and other promotional materials provided to potential FOSAMAX® users. The advertising program, as a whole, sought to create the image, impression and belief by consumers and physicians that the use of FOSAMAX® was safe for human use, had fewer side effects and adverse reactions than other nitrogenous bisphosphonates and would not interfere with daily life, even though Defendants knew these to be false, and even though the Defendants had no reasonable grounds to believe them to be true.

28. Defendants purposefully downplayed and understated the health hazards and risks associated with FOSAMAX®. Defendants, through sales representatives, promotional literature, audio conferences, professional meetings, and press releases deceived potential users of FOSAMAX® by overstating the benefits of FOSAMAX® and minimizing the known related risks associated with the drug. While withholding safety information from the FDA, the prescribing physicians and that public

29. If the Plaintiff had known the risks and dangers associated with FOSAMAX®, said Plaintiff would not have taken FOSAMAX ® and consequentially would not have been subject to its serious side effects.

FIRST CAUSE OF ACTION
STRICT LIABILITY – FAILURE TO WARN

30. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

31. Defendants, directly or indirectly, negligently and/or defectively designed, tested, inspected, manufactured, assembled, developed, labeled sterilized,

licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed the drug FOSAMAX®.

32. At all times material hereto, Defendants had a duty to users and/or consumers of FOSAMAX®, including Plaintiff, to exercise reasonable care in the design, testing, inspection, manufacture, assembly, development, labeling, sterilization, licensing, marketing, advertising, promotion, sale, packaging, supply and/or distribution of FOSAMAX®.

33. Defendants breached that duty and were negligent in the design, testing, inspection, manufacture, assembly, development, labeling, sterilization, licensing, marketing, advertising, promotion, sales, packaging, supply and/or distribution of FOSAMAX® in that: FOSAMAX® was defective when put on the market by Defendants; that with such defect, FOSAMAX® was reasonably certain to be dangerous when put to normal use; and that Defendants failed to use reasonable care in designing or making FOSAMAX® or in inspecting it for defects. Specifically, Defendants breached their duty by, among other things:

a. Failing to include adequate warnings that would alert the medical, pharmaceutical and/or scientific communities, and users and/or consumers of the drug, including Plaintiff, to the potential risks and serious side effects of the drug;
b. Failing to adequately and properly test and inspect the drug before placing the drug on the market;
c. Failing to conduct sufficient testing and inspection of the drug which, if properly performed, would have shown that the drug had serious side effects, including, but not limited to, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration;
d. Failing to adequately warn the medical, pharmaceutical and/or scientific communities, and users and/or consumers of the drug,

including Plaintiff, of the potential risks and other serious side effects associated with the drug, including, among other things, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration;

e. Failing to provide adequate post-marketing warnings or instructions after Defendants knew or should have known of the significant risks associated with the use of the drug;

f. Failing to recall and/or remove the drug from the stream of commerce despite the fact that Defendants knew or should have known of the defective and unreasonably dangerous nature of the drug, including the significant health risks associated with the use of the drug.

g. Encouraging misuse and overuse while failing to disclose the side effects of the drug to the medical, pharmaceutical and/or scientific communities and users and/or consumers, including Plaintiff, in order to make a profit from sales.

34. Defendants knew or should have known that FOSAMAX® caused unreasonably dangerous risks and serious side effects of which users and/or consumers of the drug, including Plaintiff, were not aware. Defendants nevertheless advertised, promoted, marketed, sold, distributed and/or supplied FOSAMAX® knowing that there were safer methods for treatment of osteoporosis.

35. As a direct, legal, proximate and producing result of the negligence of Defendants, Plaintiff sustained injuries including, among other things, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration. In most of these cases, these injuries caused and continue to cause extensive pain and suffering and severe emotional distress and substantially reduced Plaintiff's ability to enjoy life. In addition, Defendants' negligence caused Plaintiff to expend substantial sums of money for medical, hospital, and related care.

36. As a direct, legal, proximate and producing result of the negligence of Defendants, Plaintiff was injured in health, strength and activity and suffered physical injuries as well as mental anguish. All of these said injuries caused Plaintiff intense anxiety, distress, fear, pain, suffering and distress secondary to physical injury and damages.

37. As a direct, legal proximate and producing result of the negligence of Defendants, Plaintiff required reasonable and necessary health care treatment and services and had incurred expenses therefore. Defendants' negligence was a contributing cause of Plaintiff's injuries and Plaintiff's economic and non-economic loss.

38. By reason of the foregoing, Plaintiff was damaged by the negligence and wanton and willful recklessness of the Defendants. The amount sought herein exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this matter.

SECOND CAUSE OF ACTION
STRICT PRODUCTS LIABILITY
DEFECTIVE DESIGN

39. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

40. At all times material hereto, Defendants have engaged in the business of designing, testing, inspecting, manufacturing, assembling, developing, labeling, sterilizing, licensing, marketing, advertising, promoting, selling, packaging, supplying and/or distributing the drug FOSAMAX® , which is defective and unreasonably dangerous to users and/or consumers of the drug, including Plaintiff.

41. At all times material hereto, FOSAMAX® was designed, tested, inspected, manufactured, assembled, developed, labeled, sterilized, licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed by

Defendants in a defective and unreasonably dangerous condition in ways which include, but are not limited to one or more of the following:

a. When placed in the stream of commerce, the drug contained unreasonably dangerous design defects and was not reasonably safe and fit for its intended or reasonably foreseeable purpose or as intended to be used, thereby subjecting users and/or consumers of the drug, including Plaintiff, to risks which exceeded the benefits of the drug;

b. The drug was insufficiently tested;

c. The drug caused harmful side effects that outweighed any potential utility;

d. The drug was not accompanied by adequate labeling or instructions for use to fully apprise the medical, pharmaceutical and/or scientific communities, and users and/or consumers of the drug, including Plaintiff, of the potential risks and serious side effects associated with its use;

e. In light of the potential and actual risk of harm associated with the drug's use, a reasonable person who had actual knowledge of this potential and actual risk of harm would have concluded that FOSAMAX® should not have been marketed in that condition.

42. At all times the drug FOSAMAX® was designed, tested, inspected, manufactured, assembled, developed, labeled, sterilized, licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed, it was expected to reach, and did reach, users and/or consumers of the drug across the United States, including Plaintiff, without substantial change in the defective and unreasonably dangerous condition in which it was sold.

43. At all times, Plaintiff used FOSAMAX® for its intended or reasonably foreseeable purpose.

44. As a direct, legal, proximate and producing result of the defective and unreasonably dangerous condition of FOSAMAX®, Plaintiff sustained substantial injuries, including in some cases among other things, injuries to the jaw bones, including osteonecrosis, bone loss, and degeneration. The defective and unreasonably dangerous condition of FOSAMAX® has caused Plaintiff to expend substantial sums of money for medical, hospital, and related care.

THIRD CAUSE OF ACTION

NEGLIGENCE

45. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

46. Defendants had a duty to properly manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, label, package, distribute, prepare for use, sell, prescribe and adequately warn of the risks and dangers of FOSAMAX®.

47. Defendants negligently and carelessly manufactured, designed, formulated, distributed, compounded, produced, processed, assembled, inspected, distributed, marketed, labeled, packaged, prepared for use and sold the aforementioned products and failed to adequately test and warn of the risks and dangers of the aforementioned products.

48. Despite the fact that Defendants knew or should have known that FOSAMAX® caused unreasonable, dangerous side effects, Defendants continued to market FOSAMAX® to consumers, including Plaintiff, when there were safer, alternative methods of treating.

49. Defendants knew or should have known that consumers such as Plaintiff would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care as described above. Defendants' negligence was a proximate cause of

the Plaintiff's injuries, and the damages, harm and economic loss that Plaintiff suffered, and will continue to suffer, as described and prayed for herein.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

50. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

51. Prior to the time that the aforementioned products were used by the Plaintiff, Defendants impliedly warranted to the Plaintiff and Plaintiff's agents and physicians that said products were of merchantable quality and safe and fit for the use for which they were intended.

52. Plaintiff was unskilled in the research, design and manufacture of the aforementioned products and reasonably relied entirely on the skill, judgment and implied warranty of the Plaintiff in using the aforementioned products.

53. The aforementioned product was neither safe for its intended use nor of merchantable quality, as warranted by Defendants, in that FOSAMAX® had dangerous propensities when put to its intended use and would cause severe injuries to the user.

54. As a result of the aforementioned breach of implied warranties by Defendants, the Plaintiff was injured and suffered the harm and damages as alleged herein.

FIFTH CAUSE OF ACTION

FOR BREACH OF EXPRESS WARRANTY

55. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

56. At all times herein mentioned, Defendants expressly represented and warranted to Plaintiff and Plaintiff's agents and physicians, by and through

statements made by Defendants or its authorized agents or sales representatives, orally and in publications, package inserts and other written materials intended for physicians, medical patients and the general public, that the aforementioned product was safe, effective, fit and proper for their intended use. In reliance upon said warranties, Plaintiff purchased said product.

57. In utilizing the aforementioned products, Plaintiff relied on the skill, judgment, representations and foregoing express warranties of the Defendants. Said warranties and representations were false in that the aforementioned products were not safe and were unfit for the uses for which they were intended.

58. As a result of the foregoing breach of express warranties by the Defendants, Plaintiff was injured and sustained the harm and damages as herein alleged.

SIXTH CAUSE OF ACTION
DECEIT BY CONCEALMENT

59. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

60. Defendants, from the time that FOSAMAX® was first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, willfully deceived Plaintiff and by concealing from Plaintiff and Plaintiff's physicians and the general public, the true facts concerning said pharmaceutical products, which the Defendants had a duty to disclose.

61. Defendant Merck has not warned, and continues not to warn, physicians and consumers' physicians and consumers in the United States.

62. Defendant Merck conducted a sales and marketing campaign to promote the sale of the aforementioned drug products and willfully deceive Plaintiff and Plaintiff's physicians and the general public as to the health risks and consequences of the use of FOSAMAX® Defendants were aware of the foregoing,

and that FOSAMAX® was not safe, fit and effective for human consumption, the use of FOSAMAX® is hazardous to health, and FOSAMAX® has a serious propensity to cause serious injuries to users, including but not limited to the injuries suffered by Plaintiff and the harm and damages sustained by Plaintiff as delineated herein.

63. Defendants intentionally concealed and suppressed the true facts concerning FOSAMAX® with the intent to defraud Plaintiff, in that the Defendants knew that the Plaintiff's physicians would not prescribe FOSAMAX®, and the Plaintiff would not have used FOSAMAX®, if Plaintiff were aware of the true facts concerning the dangers of FOSAMAX®.

64. As a result of the foregoing fraudulent and deceitful conduct by the Defendants, Plaintiff was injured and suffered harm and damages as alleged herein.

SEVENTH CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

65. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

66. Defendants, from the time that FOSAMAX® was first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, made false misrepresentations, as previously set forth herein, to Plaintiff, Plaintiff's physicians, and the general public, including but not limited to the misrepresentation that FOSAMAX® was safe, fit and effective for human consumption. Defendants conducted a sales and marketing campaign to promote the sale of FOSAMAX® and willfully deceived Plaintiff, Plaintiff's physicians and the general public as to the health risks and consequences of the use of the aforementioned products.

67. The Defendants made the foregoing representation without any reasonable ground for believing them to be true. These representations were made

directly by Defendants, by sales representatives and other authorized agents of said Defendants, and in publications and other written materials directed to physicians, medical patients and the public, with the intention of inducing reliance, and the prescription, purchase and use of the subject products.

68. The foregoing representations by the Defendants were in fact false, in that FOSAMAX® was not safe, fit and effective for human consumption, the use of FOSAMAX® is hazardous to health, and FOSAMAX® has a serious propensity to cause serious injuries to users, including but not limited to the injuries suffered by Plaintiff as delineated herein.

69. The foregoing representations by Defendants were made with the intention of inducing reliance and the prescription, purchase and use of FOSAMAX®.

70. In reliance on the misrepresentations by the Defendants, the Plaintiff was induced to purchase and use FOSAMAX®. If the Plaintiff had known of the true facts and the facts concealed by the Defendants, said Plaintiff would not have used FOSAMAX®. The reliance of Plaintiff upon Defendants' misrepresentations was justified because such misrepresentations were made and conducted by individuals and entities that were in a position to know the true facts.

71. As a result of the foregoing negligent misrepresentations by the Defendants, Plaintiff was injured and suffered harm and damages as alleged herein.

PUNITIVE DAMAGES ALLEGATIONS

(As to the First, Second, Third, Sixth, and Seventh Causes of Action, only)

72. Plaintiff incorporates by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

73. The acts, conduct, and omissions of Defendants as alleged throughout this Complaint were willful and malicious and were done with a conscious disregard

for the rights of Plaintiff and other users of the Defendants' product and for the primary purpose of increasing Defendants' profits from the sale and distribution of FOSAMAX®. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against Defendants in an amount appropriate to punish and make an example of Defendants.

74. Prior to the manufacturing, sale and distribution of said prescribed medication, Defendants knew that said medication was in a defective condition as previously described herein and knew that those who were prescribed the medication would experience and did experience severe physical, mental, and emotional injuries. Further, Defendants, through their officers, directors, managers, and agents, had knowledge that the medication presented a substantial and unreasonable risk of harm to the public, including Plaintiff and, as such, said consumers of said drugs were unreasonably subjected to risk of injury or death from the consumption of said product.

75. Despite such knowledge, Defendants, acting through their officers, directors and managing agents for the purpose of enhancing Defendants' profits, knowingly and deliberately failed to remedy the known defects in said medication and failed to warn the public, including Plaintiff, of the extreme risk of injury occasioned by said defects inherent in said medication. Said Defendants and their individual agents, officers, and directors intentionally proceeded with the manufacturing, sale, and distribution and marketing of said medication knowing persons would be exposed to serious danger in order to advance Defendants' own pecuniary interest and monetary profits.

76. Defendants' conduct was despicable, and so contemptible that it would be looked down upon and despised by ordinary decent people, and was carried on by Defendants with willful and conscious disregard for the safety of and the rights of Plaintiff, entitling Plaintiff to exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants, as follows, as appropriate to each cause of action alleged:

1. Past and future general damages in excess of seventy-five thousand dollars ($75,000.00), exclusive of interest and costs, the exact amount of which has yet to be ascertained, in an amount which will conform to proof at time of trial;

2. Past and future economic and special damages according to proof at the time of trial;

3. Past medical and burial expenses according to proof at the time of trial;

4. For punitive or exemplary damages according to proof on the First, Second, Third, Sixth, and Seventh causes of action;

5. Restitution, disgorgement of profits, and other equitable relief;

6. Injunctive relief;

7. Attorney's fees;

8. For costs of suit incurred herein;

9. For pre-judgment interest as provided by law;

10. For such other and further relief as the Court may deem just and proper.

Dated: April 1, 2008

Ellen R. Serbin, AZ SBN 011706
PERONA, LANGER, BECK,
LALLANDE & SERBIN
300 East San Antonio
Long Beach, CA 90807-0948
562-426-6155; Fax 562-988-9365

Mark P. Robinson, Jr., SBN 054426
Cynthia L. Garber, SBN 208922
ROBINSON, CALCAGNIE & ROBINSON
620 Newport Center Drive, 7th Floor
Newport Beach, CA 92660
949-720-1288; Fax 949-720-1292

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by rule 38(a) of the *Federal Rules of Civil Procedure*.

Dated: April 1, 2008

Ellen R. Serbin, AZ SBN 011706
PERONA, LANGER, BECK, LALLANDE & SERBIN
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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question (U.S. Government Not a Party)
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury

PERSONAL INJURY
- ❒ 362 Personal Injury - Med. Malpractice
- ❒ 365 Personal Injury - Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 444 Welfare
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 440 Other Civil Rights

PRISONER PETITIONS
- ❒ 510 Motions to Vacate Sentence

Habeas Corpus:
- ❒ 530 General
- ❒ 535 Death Penalty
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition

FORFEITURE/PENALTY
- ❒ 610 Agriculture
- ❒ 620 Other Food & Drug
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 630 Liquor Laws
- ❒ 640 R.R. & Truck
- ❒ 650 Airline Regs.
- ❒ 660 Occupational Safety/Health
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Mgmt. Relations
- ❒ 730 Labor/Mgmt.Reporting & Disclosure Act
- ❒ 740 Railway Labor Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 463 Habeas Corpus - Alien Detainee
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 810 Selective Service
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 875 Customer Challenge 12 USC 3410
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 892 Economic Stabilization Act
- ❒ 893 Environmental Matters
- ❒ 894 Energy Allocation Act
- ❒ 895 Freedom of Information Act
- ❒ 900Appeal of Fee Determination Under Equal Access to Justice
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

❒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from another district (specify) ❒ 6 Multidistrict Litigation ❒ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ❒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

District of ARIZONA

VICKI WEEKS,

V.

MERCK & COMPANY, INC.

SUMMONS IN A CIVIL CASE

CASE

TO: (Name and address of Defendant)

Merck & Company, Inc.
One Merck Drive
P.O. Box 100
Whitehouse Station, NJ

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Mark P. Robinson, Jr.
One Merck Drive
P.O. Box 100
Whitehouse Station, NJ

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

JUDGE KEENAN

08 CV 4774

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

FILED
SDNY
5/21/08

IN RE: FOSAMAX PRODUCTS LIABILITY LITIGATION

(Vicki Weeks v. Merck & Co., Inc., D. Arizona, C.A. No. 2:08-623)
(Tommie L. Gomez v. Merck & Co., Inc., N.D. Texas, C.A. No. 6:08-17)

MDL No. 1789

CONDITIONAL TRANSFER ORDER (CTO-54)

On August 16, 2006, the Panel transferred four civil actions to the United States District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* 444 F.Supp.2d 1347 (J.P.M.L. 2006). Since that time, 123 additional actions have been transferred to the Southern District of New York. With the consent of that court, all such actions have been assigned to the Honorable John F. Keenan.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the Southern District of New York and assigned to Judge Keenan.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the Southern District of New York for the reasons stated in the order of August 16, 2006, and, with the consent of that court, assigned to the Honorable John F. Keenan.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Southern District of New York. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

Jeffery N. Lüthi
Clerk of the Panel

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK

RICHARD H. WEARE
DISTRICT COURT EXECUTIVE / CLERK OF COURT
SANDRA DAY O'CONNOR U. S. COURTHOUSE,
SUITE 130
401 WEST WASHINGTON STREET, SPC 1
PHOENIX, ARIZONA 85003-2118

Visit our website at www.azd.uscourts.gov

RONNIE HONEY
CHIEF DEPUTY CLERK
SANDRA DAY O'CONNOR U. S. COURTHOUSE,
SUITE 130
401 WEST WASHINGTON STREET, SPC 1
PHOENIX, ARIZONA 85003-2118

MICHAEL S. O'BRIEN
CHIEF DEPUTY CLERK
EVO A. DECONCINI U.S. COURTHOUSE
405 W. CONGRESS, SUITE 1500
TUCSON, ARIZONA 85701-5010

June 2, 2008

J. Michael McMahon, Clerk
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 10007

RE: Vicki Weeks, v. Merck & Company, Inc.
Dist. of AZ No. 2:08-623-DKD
S. Dist. of NY No. 08cv 4774

Dear Mr. McMahon:

Pursuant to the certified transfer order received from your Court, the above captioned case is being transferred to your court for all further proceedings. Enclosed are certified copies of the Transfer Order and docket sheet. The complete case file may be accessed via our website at: **www.azd.uscourts.gov.**

Please acknowledge receipt of same on the enclosed copy of this letter and return. Thank you.

RICHARD H. WEARE, DCE/CLERK OF COURT

By: s/ M. Pruneau
Deputy Clerk

cc: All Counsel
MDL Panel

Receipt is acknowledged of the documents described herein.

New Case Number: 08cv4774

Richard D. Sletten, Clerk
U.S. District Court, Southern District Of New York

By: _____
Deputy Clerk